

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no.21669 of 2016 (O&M)
Date of Decision : 30.04.2018

Hari Ram

....Petitioner(s)

Versus

Union of India and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJBIR SEHRAWAT

Present : Mr.V.K.Sharma, Advocate for the petitioner(s)

Mr.P.C.Goyal, Advocate for respondents

MAHESH GROVER, J.(ORAL)

The petitioner is aggrieved of the order of the Tribunal dated 5.7.2016 denying him the benefit of financial up-gradation in terms of MACP scheme (hereinafter referred to as the 'scheme').

The petitioner was engaged on contractual basis as a Lab Assistant with the Beas Construction Board on 21.8.1978. Subsequently, in the year 1986 by virtue of an order passed by the Principal, Punjab Government Higher Secondary School Salapper, his services were converted into a temporary one and for the purposes of reference we may extract the relevant portion of the order:-

“(1) In view of the decision of the H.P.

High Court on 24.5.84, employees appointed on

contractual basis against the post mentioned against each are hereby treated as Temporary Central Government Employees from the date of their initial appointment on contractual basis and their conditions of service will be governed in accordance with the Central Civil Services (Temporary Service) Rules, 1965

(2) It is also ordered to allow them running scales of pay instead of fixed rates of pay mentioned in their letters of appointment sanctioned/ adopted from time to time by the Beas Construction Board for the posts against which they were/are appointed on contractual basis.”

With effect from 3.3.1982, petitioner was granted quasi permanent status. In terms of the scheme and in particular, clause 9 thereof the petitioner claims benefit of financial up-gradation which has been denied to him by the respondents by placing reliance on clause 9 to contend that since he was not enjoying a regular service, he would not be enabled to get the financial up-gradation. Clause 9 is extracted herebelow:-

“9. 'Regular service' for the purposes of the MACPS shall commence from the date of joining of a post in direct entry grade on a regular basis either on direct recruitment basis or on absorption/re-employment basis. Service rendered on adhoc/ contract basis before regular appointment on pre-appointment training shall not be taken into reckoning. However, past continuous regular service in another Government Department in a

post carrying same grade pay prior to regular appointment in a new Department, without a break, shall also be counted towards qualifying regular service for the purposes of MACPS only (and not for the regular promotions). However, benefits under the MACPS in such cases shall not be considered till the satisfactory completion of the probation period in the new post.”

After hearing learned counsel for the parties, we are of the opinion that issue is no longer res integra. This Court in identical circumstances and qua similarly placed persons have accepted the plea of employees when a writ petition bearing CWP no. 22139 of 2015 titled as **Union of India and others vs. Central Administrative Tribunal, Chandigarh and others** was filed by the Union of India and held the employee entitled to financial up-gradation. In the aforesaid case decided on 23.5.2016, reliance was placed on the Bombay High Court judgment based on several precedents of the Hon'ble Supreme Court.

Since this issue already stands determined, we are of the opinion that no distinction on facts can be made in the case of the present petitioner and this would enable him to a similar benefit of financial up-gradation in terms of the scheme. We also notice from the facts that once a temporary status had been granted to the petitioner with effect from the original date of appointment i.e in 1978 and converted into quasi permanent arrangement there would be no reason to dis-entitle the petitioner on the ground that he was not regularly engaged for his previous engagement made in accordance with law would necessarily has to be counted for the purposes

Hence, instant petition is allowed. Impugned order is hereby quashed and the petitioner is held entitled to financial up-gradation.

(Mahesh Grover)
Judge

30.04.2018
rekha
Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(Rajbir Sehrawat)
Judge